TEAGUE P. PATERSON, SBN 226659
VISHTASP M. SOROUSHIAN, SBN 278895
BEESON, TAYER & BODINE, APC
483 Ninth Street, 2nd Floor
Oakland, CA 94607
Telephone: (510) 625-9700
Facsimile: (510) 625-8275
Email: tpaterson@beesontayer.com

Attorneys for Plaintiff
American Federation of State, County & Municipal Employees Local 101

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

AT SAN JOSÉ

SAN JOSE POLICE OFFICERS' ASSOCIATION,

Plaintiff,

v.

CITY OF SAN JOSÉ, BOARD OF ADMINISTRATION FOR POLICE AND FIRE DEPARTMENT RETIREMENT PLAN OF CITY OF SAN JOSE, and DOES 1-10, inclusive,

Defendants.

AND RELATED CROSS-COMPLAINT AND CONSOLIDATED ACTIONS

Consolidated Case No. 1-12-CV-225926

[Consolidated with Case Nos. 1-12-CV-225928, 1-12-CV-226570, 1-12-CV-226574, 1-12-CV-227864, and 1-12-CV-233660]

Assigned For All Purposes To:
Judge Patricia Lucas
Department 2

AFSCME LOCAL 101'S REPLY MEMORANDUM IN SUPPORT OF ITS SUPPLEMENTAL MOTION FOR ATTORNEYS' FEES, PURSUANT TO JUDGE LUCAS' ORDER OF OCTOBER 1, 2014

Hearing Date:	December 16, 2014
Hearing Time:	9:00 a.m.
Courtroom:	2
Judge:	Honorable Patricia Lucas
Action Filed:	June 6, 2012
Trial Date:	July 22, 2013

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. ARGUMENT 2

A. The City's Proposed Framework Is Unsound 2

1. The City's 85% "Negative Multiplier" 3

2. Neither AFSCME Nor Its Members Received Financial Benefits 4

3. Fees Attributable to Unsuccessful but Related Claims Are to be Awarded 4

4. The City Improperly Ignores AFSCME's Voluntary Reduction in its Bills 5

5. The City Fails to Account for AFSCME's Reduced Hourly Rate 6

B. AFSCME's Fees Request Is Reasonable and the City Fails to Rebut Specific Entries 6

1. AFSCME's Fees for Work Performed on Unsuccessful Legal Theories Were Reasonable 7

2. The City Fails to Address Fees Related to Its Federal Case 7

3. The City Has Failed to Justify a Reduction for Purportedly Block-Billed or Vague Entries 7

4. AFSCME Is Entitled to Work Performed Opposing the City's Motions in Limine 8

5. AFSCME's Fees Related to the Complaint, Pre and Post-trial Briefs Are Reasonable 9

6. Fees Related to this Motion Are Recoverable and Not Subject to Percentage Reduction 10

7. Plaintiffs Coordinated to the Extent Practicable 10

III. CONCLUSION 10

I. INTRODUCTION

The City suggests that 160 hours of attorney time, multiplied by a below-market rate, is a reasonable fees award in a complex case, involving vigorously contested issues culminating in a five-day trial. In reaching this figure, the City forwards unsupported conclusions, utilizes methods not permitted by state or federal law, and offers no evidence for its position. For example, the City:

- Takes a "chopping block" approach to AFSCME's billing records. Rather than pointing to specific examples of inefficient or unnecessary time, the City simply proposes chopping large swathes of attorney time: 50 hours here, 65 hours there, etc.
- "Double-dips," meaning it eliminates time from what it describes as "unsuccessful claims" and then again applies a negative multiplier to account for "unsuccessful" claims;
- Asserts AFSCME spent a large amount of time preparing "frivolous" motions in limine when, in fact, much of that time was spent successfully opposing the City's own motions in limine;
- Fails to account for the fact that AFSCME has sought a below-market hourly rate in recognition of the considerations set forth in the Court's October 1, 2014 Order; and
- States there is no evidence of AFSCME's 15% reduction averred in the Paterson Declaration, essentially accusing AFSCME's counsel of perjury.

The City makes many other errors,[1] but its chief error is its failure to carry its evidentiary burden. The City fails to provide evidence regarding market rates, the amount of time counsel should reasonably have spent, or to point to specific examples of inefficiency or largess. It also failed to offer a summary of its own time through a Defendant's Proxy, a common practice in fees litigation.

After amply rewarding its own attorneys, the City now urges caution on behalf of taxpayers, a concern AFSCME recognized when it applied a below-market hourly rate as stated in its opening brief, but which the City ignored. Further, the City's own cited authority contradicts its false alarm:

> [T]he Supreme Court has urged particular caution when the fee award is against private parties rather than the government: ¶ Differing abilities to bear the cost of legal fees and differing notions of responsibility for fulfilling the goals of the Clean Air Act likely would justify exercising special care regarding the award of fees against private parties.

(*Sierra Club v. E.P.A.* (D.C. Cir. 1985) 769 F.2d 796, 810 (emphasis added).) Indeed, "fees should be neither lower, nor calculated differently, when the losing defendant is the government." (*Copeland v. Marshall* (D.C. Cir. 1980) 641 F.2d 880, 896.) Together plaintiffs seek "approximately $2 million dollars," which is still *far less* than the amount the City (*i.e.*, taxpayers) paid its attorneys to defend the claims and prosecute its case. This fact alone indicates AFSCME's fees are reasonable.

[1] The City's billing analysis is riddled with errors. (Paterson Suppl. Decl., ¶ 7; Soroushian Decl., ¶¶ 5, 6)

II. ARGUMENT

The City failed to meet its burden of rebutting the reasonableness of AFSCME's attorneys' hours. "Once a documented fee claim is presented, the burden shifts to the opposing party to present specific objections to either the hours claimed or the rates charged by counsel." (Pearl, Cal. Attorney Fee Awards (Cont.Ed.Bar 2d ed.2008) §§ 12.14A, 12.34, pp. 336-337, 368.4; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140-41 (challenging party must "provide an adequate record to assess error").) "[I]t is the burden of the challenging party to point to the specific items challenged, with a sufficient argument and citations to the evidence. General arguments that fees claimed are excessive, duplicative, or unrelated do not suffice." (*Premier Med. Mngmt. Systems, Inc. v. Cal.* (2008) 163 Cal.App.4th 550, 564 ("*Premier*"); *Gorman v. Tassajara Devel. Corp.* (2009) 178 Cal.App.4th 44, 101 (Opposing party is "expected to identify the particular charges it considers objectionable").)

Courts do not apply reductions to fees on the basis of conclusory, speculative or unscientific measures. (*Children's Hosp. and Medical Center v. Bonta* (2002) 97 Cal.App.4th 740, 783.) Rather, the City has "two options to oppose" the hours claimed: it can "attack the itemized billings with evidence that the fees claimed were not appropriate, or obtain the declaration of an attorney with expertise in the procedural and substantive law to demonstrate that the fees claimed were unreasonable." (*Premier, supra,* 163 Cal.App.4th at 563-64.) The City "has done neither." (*Id.*; *Avakian v. WTC Financial Corp.* (2002) 98 Cal.App.4th 1108, 1119.) The City's Opposition rests solely on adjectives -- describing AFSCME's efforts as "downright absurd," "frivolous," etc. -- but not evidence and, accordingly, it has failed to carry its burden.

A. The City's Proposed Framework Is Unsound

The City suggests several improper methods to reduce AFSCME's fees. It engages in "double dipping" by asking the Court to eliminate time related to "unsuccessful" claims, and then requests an additional negative multiplier for "lack of success." It also applies a "chopping block" approach, under which it blithely and without evidence eliminates large chunks of time. Because the City lacks evidence or detail as to why such large, whole numbers should be chopped, it is improper.

1. The City's 85% "Negative Multiplier"

The City's reduction of an already-reduced lodestar by 85% is an unsupportable overreach. Lodestars should not be discounted in proportion to the number of claims on which a plaintiff prevailed without considering the complexity of each claim. (*RiverWatch v. San Diego Dept. of Environ. Health* (2009) 175 Cal.App.4th 768, 783 ("[T]heir argument fails to account for the qualitative as opposed to quantitative significance of the issues...").) The *RiverWatch* plaintiffs prevailed on three issues among sixty separate claims, and the court declined to reduce the fee award to reflect a lack of success on many issues. (*Id.* at 773, 783.) Although not explained, the City's negative multiplier appears based on the number of sections of Measure B that survived challenge.[2]

The City's approach of reducing hours for work on unsuccessful claims *twice* is unprecedented as appellate courts reverse awards that apply multipliers based on considerations already incorporated in the lodestar. (*Ramos v. Countrywide Home Loans* (2000) 82 Cal.App.4th 615, 624-27 (multiplier not a proper exercise of discretion if dependent on duplicative reweighing of factors).) The City seeks to reduces the lodestar where AFSCME has already voluntarily reduced it by: (1) eliminating 15% of its time; (2) applying a below-market hourly rate; and (3) declining to seek an upward multiplier.[3] The City ignores this while also removing additional time and adds a duplicative 85% negative multiplier.

The City also overreaches by suggesting that time spent on unsuccessful claims must be eliminated. Such a reduction is proper only with respect to "unrelated" claims. In *Sundance v. Municipal Court* (1987) 192 Cal.App.3d 268, 273, the Court of Appeal stated:

> Section 1021.5 itself simply states that awards are to be made to successful parties, with no mention of excluding compensation for the successful parties' unsuccessful legal theories .... To reduce the ... fees of a successful party because he did not prevail on all his arguments, makes it the attorney, and not the defendant, who pays the cost of enforcing that public right.

(*See also Cabrales v. Los Angeles* (9th Cir. 1991) 935 F.2d 1050, 1052.) The City mis-cites its sole authority on this point, *Chavez v. Los Angeles* (2010) 47 Cal.4th 970, which affirmed a fees reduction

[2] The City cites *Schwarz v. Secr. of HHS* (9th Cir. 1995) 73 F.3d 895 in support of a quantitative proportionate reduction. This approach is inapplicable in cases where a district court can identify the precise amount of fees incurred on unsuccessful and unrelated claims. (*See id.* at 905.) In *Schwarz*, the successful and unsuccessful claims related to events that occurred in two different agency locations. (*Id.* at 903-04.)

[3] The City incorrectly implies that AFSCME would not be eligible for any sort of increase based on novel issues or skill of counsel (City Opp., p. 4), an incorrect contention (Paterson Supp. Dec., ¶¶ 3-5, Exh. A.)

for other reasons, namely because: (1) the claim should have been a limited civil action; (2) the fees were "unreasonably inflated"; and (3) the successful claim did not have "any broad public impact" and was "not closely related to or factually intertwined with" the unsuccessful claims." (*Id.* 726-27.)

The *Chavez* court cited to *Hensley v. Eckerhart* (1983) 461 U.S. 424, which rejects the City's approach. *Hensley* indicates that fees should not be reduced when plaintiffs achieve substantial relief in suits with related claims merely because a court does not adopt each contention. (*Id.* at 440.)

2. Neither AFSCME Nor Its Members Received Financial Benefits

The City continues to assert that AFSCME's financial gain in this litigation precludes a fee award, and reargues *Collins v. Los Angeles* (2012) 205 Cal.App.4th 140, and *CTA v. Cory* (1984) 155 Cal. App. 3d 494 ("*Cory*"), (City Opp., pp. 2-3). The Court has rejected this contention. (Oct. 1, 2014 Order, pp. 6:19-21). The *Collins* court noted that in considering a fee award, courts should consider the *actual monetary recovery* as well as any other *direct* financial benefits provided by the judgment. (*Id.* at 158.) Here, as previously recognized, AFSCME achieved no direct or actual monetary recovery for its members. The same reasoning applies as to *Cory,* a case in which CTA sought an order directing the Legislature to deposit hundreds of millions of dollars into CalSTRS. CTA was not entitled to fees because "the large sums in issue will accrue to the *direct benefit* of the members of [CalSTRS]." (*Id.*) emphasis added.) Here, no "sums" will accrue to the benefit of AFSCME members; rather AFSCME confirmed the *status quo* of its members' right to continue to earn specified pension benefits. The City engages in highly-speculative conjecture of its future pension *costs* (City Opp., pp. 12-13), but the Court did not require the City to place such monies into members' retirement accounts, and a right to earn benefits through service is not a "financial reward." No negative multiplier predicated on a theory of financial incentive or reward is warranted.

3. Fees Attributable to Unsuccessful but Related Claims Are to be Awarded

The City argues that AFSCME's fees should be reduced because it did not prevail on all its claims. While relying on *Hensley* and progeny, the City fails to identify the applicable standard. Again, that standard permits eliminating time for "unrelated" claims (whether successful or unsuccessful), but confirms that time spent on unsuccessful "related" claims is recoverable:

> [R]elated claims will involve a common core of facts or will be based on related legal theories. Under this analysis, an unsuccessful claim will be unrelated to a successful

> claim when the relief sought on the unsuccessful claim is intended to remedy a course of conduct entirely distinct and separate from the course of conduct that gave rise to the injury on which the relief granted is premised.

(*Envtl. Prot. Info. Ctr. v. Cal. Dep't of Forestry & Fire Prot.*, 190 Cal. App. 4th 217, 239 (cites omitted) ("*EPIC*").) Under this formulation, AFSCME's various causes of action are related, and fees are therefore recoverable regardless of individualized success.

AFSCME's claims involved identical facts, a single course of conduct, equivalent remedies, and are based on a common legal theory (*i.e.,* impairment of vested rights). The City's reliance on *EPIC* is misplaced because, although the *EPIC* plaintiffs "did not attain some important objectives of its litigation," the court found that their unsuccessful claims were *related* to their successful ones. (*Id.* at 246, 247.) AFSCME challenged a single voter referendum and, for this reason, this case also differs from *Sierra Club, supra,* 769 F.2d at 803, where the "different policy rationales and statutory provisions set forth by the [EPA] as support for its decisions on different issues ma[de] the different claims legally distinct." Courts should grant fees for related but unsuccessful claims if the time is reasonably incurred. (*E.g., Sokolow v. San Mateo County* (1989) 213 Cal.App.3d 231, 249; *Sundance, supra,* 192 Cal.App.3d at 273-74).

AFSCME's victories in this case were substantial and no additional reduction to the lodestar is warranted. (*RiverWatch, supra,* 175 Cal.App.4th at 783.) Aside from prevailing on the 'reservation of rights' issue, AFSCME also invalidated the portions of Measure B that most affected its members' pension benefits. AFSCME also achieved success with respect to retiree health by invaliding a provision that would permit the City to increase member contributions towards unfunded liabilities.[4]

4. The City Improperly Ignores AFSCME's Voluntary Reduction in its Bills

As detailed in its opening papers, AFSCME reduced its state court fees by 15% and federal case fees by 30%.[5] The Court should consider this voluntary reduction when assessing the reasonableness of AFSCME's request. As noted by the court in *Sierra Club, supra,* 769 F.2d at 807:

---

[4] That AFSCME did not prevail on challenges to disability retirement definitions and SRBR do not change this outcome, as those sections were far less significant to AFSCME members. Few Federated System members retire on disability (City Exh. 5103, pp. 9-10; Trial Tr. 516:14-19), and very few SRBR distributions were ever made in the Federated System. (City Exhs. 5707-5709, 5717-5718; Trial Tr. 766:3-768:15.)

[5] The City's says that there is no "proof" of this, but sworn testimony is evidence and proof. (*See Weber v. Langholz* (1995) 39 Cal.App.4th 1578, 1587.)

> [T]he petitioners deducted some forty hours from those actually expended in the exercise of billing judgment. Taking into consideration all these circumstances, we do not believe that the petitioners have been unreasonable in their calculation of hours attributed to their labors in this case.

5. The City Fails to Account for AFSCME's Reduced Hourly Rate

The City states it "accepts" AFSCME's blended rate of $275 hour (City Opp., p. 22); however, it fails to address the fact that this rate is vastly below market and was offered as a reduction in light of the factors indicated in the October 1, 2014 Order. In submitting its own formulation of an appropriate lodestar, the City was required to apply a market rate (not the firm's actual rate), but it failed to do so. (*Welch v. Metro Life Ins. Co.* (9th Cir. 2007) 480 F.3d 942, 946; *Syers Properties III, Inc. v. Rankin* (2014) 226 Cal.App.4th 691, 701.) As noted in the Bezemek, Adam, Silver and Paterson declarations, a $275 hourly rate is well below market, a fact the City failed to counter. The City cites a decision of the D.C. Circuit (City Opp., pp. 6, 9) where the court applies its "*Laffey* Matrix," an annually-update attorneys' fees market-rate matrix. Having relied on this precedent, the City should not object to application of the *Laffey* Matrix. (Paterson Suppl. Decl., ¶ 6; Exh. B.)[6] California's courts may utilize the *Laffey* Matrix to determine rates, but apply a 9%-10% *increase* to account for higher rates charged in the Bay Area.[7] (*Syers*, 226 Cal.App.4th at 696-97; *Theme Promotions, Inc. v. News Am. Mktg. FSI, Inc* (N.D. Cal. 2010) 731 F.Supp.2d 937, 950.)[8]

At the *Laffey* Matrix rates, Messrs. Soroushian's and Paterson's time is billed at the hourly rates of $255 and $460, respectively; and clerk time at $150 per hour, which increases AFSCME's Lodestar by an additional $84,350, or over 16.4%. (Paterson Suppl. Decl. ¶¶ 17-20), without accounting for the 9-10% CPI increase for the SF Bay Area. If the City is unwilling to recognize the discount associated with AFSCME's proposed rate, the City's own lodestar calculation must apply market rates. (*E.g., Donovan v. Poway Unified Sch. Dist.* (2008) 167 Cal.App.4th 567, 627-28 (applying 1.25 multiplier in light of plaintiffs' low hourly rate).)

B. AFSCME's Fees Request Is Reasonable and the City Fails to Rebut Specific Entries

The City points to the total hours worked on various tasks, but fails to identify specific time unreasonably expended. The City's general "chopping block" approach does not satisfy its burden.

---

[6] Also available here: http://www.justice.gov/usao/dc/divisions/Laffey%20Matrix_2014-2015.pdf

[7] The rates attested to in the Adam and Silver declarations are well within the range set by the *Laffey* matrix.

[8] Applying the matrix's 2009-2010 rates: 11-19 years = $446.90; 8-10 = 359.70; 4-7 = 294.30; 1-3 = $242.25.

(*Premier, supra,* 163 Cal.App.4th at 560 ("Since appellants submitted no evidence that the hours claimed by counsel were excessive, they appear to be asking that we declare as a matter of law that the hours were unreasonable…").) It is indicative of reasonableness, and not of a conspiracy to inflate bills, that Plaintiffs spent roughly similar amounts of time on the tasks itemized by the City.

1. AFSCME's Fees for Work Performed on Unsuccessful Legal Theories Were Reasonable

Again, AFSCME can recover for its time spent on unsuccessful legal theories, including its alternative legal theories. Because the City's demurrer and motion for judgment on the pleadings addressed several of these alternative theories, fees for work defending those motions is recoverable. (Paterson Suppl. Decl., ¶ 21.) Because the City provided no valid justification, proof, or evidence that the time spent by AFSCME's was unreasonable, the time should be included in the lodestar.

2. The City Fails to Address Fees Related to Its Federal Case

The City fails to rebut AFSCME's entitlement to fees for defending the federal case. (*Children's Hosp. & Med. Ctr. v. Bonta* (2002) 97 Cal.App.4th 740.) It merely states that it voluntarily withdrew its federal case[9] and inexplicably notes the POA did not also seek fees. Both of which are irrelevant considerations.

3. The City Has Failed to Justify a Reduction for Purportedly Block-Billed or Vague Entries

The City objects to so-called block-billing and entries it labels as "vague" and makes a gross mathematical error in its call for a reduction. While it asks for a 20% reduction - a random figure it fails to justify - it miscalculates this sum in its own favor by 33.11 hours. (*See* City Opp. at 23:25-24:1; Soroushian Decl., ¶ 6.) Nonetheless, the City's cry of "block billing" requires closer analysis.

Block-billing is not "objectionable *per se*" (*Christian Research Institute v. Alnor* (2008) 165 Cal.App.4th 1315, 1325), and courts do not discount block-billed time entries where "[t]he evidence submitted [is] sufficient to allow the trial court to determine … the hours [] reasonably expended." (*Lunada Biomedical v. Nunez* (2014) 230 Cal.App.4th 459, 486-87 (quotes omitted).) A moving party can "carry its burden of establishing its entitlement to attorney fees by submitting a declaration from counsel instead of billing records or invoices." (*Id.* at 487-88; *Weber v. Langholz* (1995) 39 Cal.App.4th 1578, 1587 (fee award proper even in absence of submission of time records and billing

[9] The City withdrew its federal action in the face of AFSCME's motion to dismiss and this Court's refusal to cede jurisdiction. (Paterson Suppl. Decl., ¶¶ 15-16; Supp. RJN, Exhs. A-C.)

statements); *In re Sutter Health Uninsured Pricing Cases* (2009) 171 Cal.App.4th 495, 512 (same).) Importantly, B&P Code section 6148(b) sets forth the requirement for legal services bills and "does not expressly require disclosing the date upon which services were rendered or that services be specifically described. I.e., "block" billings where multiple tasks are billed in a single entry are evidently permissible (e.g., "Research, draft motion, attend deposition, attend hearing on motion ...)." (Cal. Prac. Guide Prof. Resp. Ch. 5-H, 5:920.) Here, AFSCME's billing entries and descriptions provide ample evidence to verify the reasonableness of the hours spent. The purported block-billed entries involve daily trial preparation, preparation of the opposition to the City's MSA, or work required by the pre-trial stipulation and order. (Paterson Suppl. Decl., ¶ 13; Soroushian Decl., ¶¶ 7(g),7(f), 8; Suppl. RJN, Exh. D.) The entries do not lump unrelated tasks together for a daily charge, and the time spent on trial preparation and the MSA opposition is very reasonable and fully recoverable under this fees request. (*Id.*) The City does not contend that the time spent was unreasonable or unrecoverable. (*Jaramillo v. Orange County* (2011) 200 Cal.App.4th 811, 830 (block billing is not problematic where "there was no need to separate out covered from uncovered work").)

As for entries labelled "vague," no reduction is warranted because all the time related to work performed on compensable tasks (*i.e.* preparing discovery requests and responses, opposing the MSA, and preparing witnesses). "Because time records are not required under California law ... there is no required level of detail that counsel must achieve." (*Syers, supra,* 226 Cal.App.4th at 699; *PLCM Group v. Drexler* (2000) 22 Cal.4th 1084, 1098 ("We do not want a trial court, in setting an attorney's fee, to become enmeshed in a meticulous analysis of every detailed facet of the professional representation").) The supplemental declarations AFSCME submits with this reply provide greater detail as to these entries, in the event the Court requires additional information to evaluate the time spent. (Soroushian Decl., ¶ 7; Paterson Suppl. Decl., ¶¶ 12, 14.)

4. AFSCME Is Entitled to Work Performed Opposing the City's Motions in Limine

Although AFSCME did not prevail on its motions in limine, it prevailed in defending many of the City's motions in limine. (Paterson Suppl. Decl., ¶ 8; Exhibit H to Decl. of Linda Ross, pp. 2-3.) The City's unsupported assertion that AFSCME's work "bordered on frivolous" does not suffice to carry its burden, especially because the City combines time spent both preparing and opposing

motions in limine in this category, further illustrating the unreliability of the City's summaries. AFSCME's motions in limine themselves served a beneficial purpose, presenting issues to the trial court in advance. That these motions were denied does not render them frivolous, and section 1021.5 is not intended to punish litigants from enjoying vigorous representation.

5. AFSCME's Fees Related to the Complaint, Pre and Post-trial Briefs Are Reasonable

The City declares blithely that time spent drafting the complaint was excessive and should be reduced by a flat 50 hours, because AFSCME could have copied the POA's complaint. The POA and AFSCME are separate entities with separate interests whose members are in different systems. Each system has a different history, ordinances and charter provisions. AFSCME's complaint spanned 28 pages of over 200 paragraphs, and required substantial factual and legal investigation.

Without explanation the City hacks 45 hours for pre-trial briefing, incorrectly stating it was duplicative of the opposition to the MSA. The MSA presented a single issue, while the pre-trial brief encompassed AFSCME's trial presentation. The standard of proof is different, as is the party bearing it. AFSCME also submitted the pre-trial brief in lieu of an opening argument, an example of efficiency, whereas the City prepared both a pre-trial brief and presented a lengthy opening argument coupled with a multi-media power-point presentation. AFSCME's post-trial brief was also in lieu of a closing statement, required the application of five days of testimony and tens of thousands of pages of exhibits. The brief measured 74 pages and the City fails to specify any excessive time entries.

Lastly, the City contends AFSCME is entitled to no award for time defending the City's demurrers and motions on the pleadings. The City offers no explanation for this position, but declares *carte blanch* that "all the time" defending these motions "must be subtracted." Demurrers and summary motions are an integral part of litigation, and the claims involved were related to successful claims and are therefore compensable. (*Cabrales, supra,* 935 F.2d at 1053 ("plaintiff who is unsuccessful at a stage of litigation that was a necessary step to her ultimate victory is entitled to attorney's fees even for the unsuccessful stage").) The City failed to carry its burden of establishing the time spent was unreasonable, and its chopping-block methods must be rejected. (*Premier, supra,* 163 Cal.App.4th at 563-64 (rejecting claim of excessive fees where appellee "submitted no evidence to contradict the declarations and billing records submitted").)

6. Fees Related to this Motion Are Recoverable and Not Subject to Percentage Reduction

"[F]ees recoverable under section 1021.5 ordinarily include compensation for all hours reasonably spent, including those necessary to establish and defend the fee claim." (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 639; *Sokolow,* 213 Cal. App. 3d at 249). The City improperly seeks a reduction in two places. The City has applied its suggested 85% negative multiplier to time spent on this motion. There is no basis in law or fact for doing so, as fees on fees are routinely awarded. The City also suggests excess time was expended. Although incorrect, the blame for any inefficiency is on the City, which, after AFSCME filed its initial fees application, requested bifurcation and new briefing. AFSCME agreed to this lengthier process as a courtesy, and it required additional attorney time. The City has also failed to specify any unreasonable time spent and has not met its burden.

7. Plaintiffs Coordinated to the Extent Practicable

The City contends that the Plaintiffs in this litigation did not adequately coordinate their efforts. The Plaintiffs filed separate actions and represented distinct interests. It was the City that sought coordination, which was not granted for a number of months and then only on a limited basis. Coordination entailed efficiencies where possible, while each Plaintiff remained responsible for its own case and proof. The true efficiencies of coordination were enjoyed by the City, enabling it to submit single motions, expert witnesses and proceed with a consolidated trial. Among the Plaintiffs, however, it entailed additional effort, requiring Plaintiffs' respective counsel to confer and negotiate. Nonetheless, significant efficiencies were gained among Plaintiffs which is reflected by the fact that the fees sought by the three Plaintiffs are still far less than the total fees the City has paid to its attorneys. There is no evidence of insufficient coordination; in fact, the opposite is true.

III. CONCLUSION

For the foregoing reasons, AFSCME's fees request should be granted.

Dated: December 4, 2014

BEESON, TAYER & BODINE, APC

By: _____
TEAGUE P. PATERSON
VISHTASP M. SOROUSHIAN
Attorneys for AFSCME LOCAL 101

PROOF OF SERVICE

SANTA CLARA COUNTY SUPERIOR COURT

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Beeson, Tayer & Bodine, Ross House, Suite 200, 483 Ninth Street, Oakland, California, 94607-4051. On this day, I served the foregoing Document(s):

AFSCME LOCAL 101'S REPLY MEMORANDUM IN SUPPORT OF SUPPLEMENTAL MOTION FOR ATTORNEYS' FEES PURSUANT TO JUDGE LUCAS' ORDER OF OCTOBER 1, 2014

☒ **By Mail** to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

☒ **By Electronic Service.** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

SEE SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, December 4, 2014.

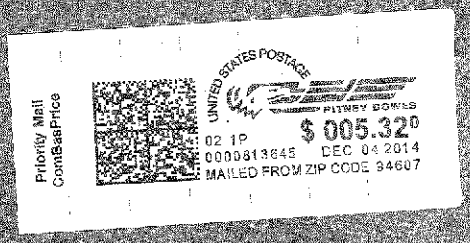
Esther Aviva

SERVICE LIST

Greg McLean Adam, Esq. Jonathan Yank, Esq. Gonzalo C. Martinez, Esq. Amber L. Griffiths, Esq. CARROLL, BURDICK & McDONOUGH LLP 44 Montgomery Street, Suite 400 San Francisco, CA 94104 jyank@cbmlaw.com agriffiths@cbmlaw.com jstoughton@cbmlaw.com gmartinez@cbmlaw.com *Attorneys for Plaintiff, SAN JOSE POLICE OFFICERS' ASSOCIATION (Santa Clara Superior Court Case No. 112CV225926)*	Arthur A. Hartinger, Esq. Geoffrey Spellberg, Esq. Linda M. Ross, Esq. Jennifer L. Nock, Esq. Michael C. Hughes, Esq. MEYERS, NAVE, RIBACK, SILVER & WILSON 555 12th Street, Suite 1500 Oakland, CA 94607 ahartinger@meyersnave.com jnock@meyersnave.com lross@meyersnave.com mhughes@meyersnave.com *Attorneys for Defendants, THE CITY OF SAN JOSE AND DEBRA FIGONE*

John McBride, Esq. Christopher E. Platten, Esq. Mark S. Renner, Esq. WYLIE, McBRIDE, PLATTEN & RENNER 2125 Canoas Garden Avenue, Suite 120 San Jose, CA 95125 jmcbride@wmprlaw.com cplatten@wmprlaw.com *Attorneys for Plaintiffs/Petitioners, ROBERT SAPIEN, MARY McCARTHY, THANH HO, RANDY SEKANY AND KEN HEREDIA (Santa Clara Superior Court Case No. 112-CV-225928)* *AND* *Plaintiffs/Petitioners, JOHN MUKHAR, DALE DAPP, JAMES ATKINS, WILLIAM BUFFINGTON AND KIRK PENNINGTON (Santa Clara Superior Court Case No. 112-CV-226574)* *AND* *Plaintiffs/Petitioners, TERESA HARRIS, JON REGER, MOSES SERRANO (Santa Clara Superior Court Case No. 112-CV-226570)*	Harvey L. Leiderman, Esq. REED SMITH, LLP 101 Second Street, Suite 1800 San Francisco, CA 94105 hleiderman@reedsmith.com *Attorneys for Defendant, CITY OF SAN JOSE, BOARD OF ADMINISTRATION FOR POLICE AND FIRE DEPARTMENT RETIREMENT PLAN OF CITY OF SAN JOSE (Santa Clara Superior Court Case No. 112CV225926)* *AND* *Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE 1961 SAN JOSE POLICE AND FIRE DEPARTMENT RETIREMENT PLAN (Santa Clara Superior Court Case No. 112CV225928)* *AND* *Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE 1975 FEDERATED CITY EMPLOYEES' RETIREMENT PLAN (Santa Clara Superior Court Case Nos. 112CV226570 and 112CV22574)* *AND* *Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE FEDERATED CITY EMPLOYEES RETIREMENT PLAN (Santa Clara Superior Court Case No. 112CV227864)*
Stephen H. Silver, Esq. Richard A. Levine, Esq. Jacob A. Kalinski, Esq. SILVER, HADDEN, SILVER, WEXLER & LEVINE 1428 Second Street, Suite 200 Santa Monica, CA 90401-2367 jkalinski@shslaborlaw.com shsilver@shslaborlaw.com rlevine@shslaborlaw.com *Attorneys for Plaintiffs, SAN JOSE RETIRED EMPLOYEES ASSOCIATION, HOWARD E. FLEMING, DONALD S. MACRAE, FRANCES J. OLSON, GARY J. RICHERT and ROSALINDA NAVARRO (Santa Clara Superior Court Case No. 112CV233660)*	

135.023
K. Thomas
p. pacheco



BEESON, TAYER & BODINE
ROSS HOUSE, SUITE 200
483 NINTH STREET
OAKLAND, CALIFORNIA 94607-4051

~~Arthur A. Harlinger, Esq.~~

To: Geoffrey Spellberg, Esq.
Linda M. Ross, Esq.
Jennifer L. Nock, Esq.
Michael C. Hughes, Esq.
MEYERS, NAVE, RIBACK, SILVER & WILSON
555 12th Street, Suite 1500
Oakland, CA 94607

ADDRESS SERVICE REQUESTED